91-193

NO. _____

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 1990

BETTA KELLY, PETITIONER

V.

HOLIDAY INN OF BLYTHEVILLE

PETITION FOR A WRIT OF CERTIORARI TO THE ARKANSAS SUPREME COURT

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ATTORNEY FOR PETITIONER

QUESTION PRESENTED

Should the standard of review currently used by the Arkansas Supreme Court when reviewing a decision by the Workers' Compensation Commission, an administrative agency whose members are political appointees, be changed from "any substantial evidence supporting the Commission's decision" to "substantial evidence on the record as a whole", the standard currently used by the U. S. District Court and the U. S. Court of Appeals, because the equal protection clause of the United States Constitution is abrogated?

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BETTY KELLY, PETITIONER

V.

HOLIDAY INN OF BLYTHEVILLE

PETITION FOR A WRIT OF CERTIORARI TO THE ARKANSAS SUPREME COURT

The petitioner, Betty Kelly, petitions for a writ of certiorari to review the judgment of the Arkansas Supreme Court in this case.

OPINIONS BELOW

The opinion of the Arkansas Supreme Court denying the petition for review of the decision of the Arkansas Court of Appeals is unreported, but is attached hereto as Appendix A. The opinion of the Arkansas Court of Appeals denying the petition for rehearing is unreported but is attached hereto as Appendix B. The opinion of the Arkansas Court of Appeals affirming the Commission is unreported but is attached as Appendix C.

JURISDICTION

The judgment of the Arkansas Supreme Court (Appendix A) was entered on June 10, 1991. The jurisdiction of this Court is invoked under 28 U.S.C. § 1254 (1).

STATUTES INVOLVED

The relevant provisions of Arkansas Code of 1987 Annotated, § 11-9-711 (b) (4) (D), is set forth in Appendix D.

STATEMENT

This case concerns § 11-9-711 (b) (4) (D), which involves the scope of judicial review of an order of the Workers' Compensation Commission. The petitioner, Betty Kelly, was employed by the respondent, Holiday Inn of Blytheville, and received an on-the-job injury on 12/17/87 when she fell while performing the job as a maid. Temporary total benefits were paid through 2/22/88. Ms. Kelly filed a claim with the Commission contending that she was entitled to additional temporary total benefits, permanent partial disability benefits attributable to twenty percent to the body as a whole, and, payment of her chiropractic bills. A hearing was held before an Administrative Law Judge (hereinafter ALJ) and in an opinion dated 3/6/90, the ALJ concluded that Ms. Day was entitled to permanent partial disability benefits at the rate of 20% to the body as

a whole, but no further temporary total disability benefits. In addition, the ALJ determined that the respondent was not responsible for the chiropractic care. The Commission reversed the ALJ's finding that claimant was entitled to permanent partial disability benefits, and affirmed the finding that respondent was not responsible for paying for the chiropractic treatment. In a subsequent Commission opinion dated 9/21/90, claimant's motion to reopen to introduce new medical evidence was denied.

Ms. Kelly appealed to the Arkansas Court of Appeals, and in her appeal raised the issue of changing the present standard of judicial review. On 5/8/91, the Arkansas Court of Appeals issued a decision based on the current standard of judicial review, finding that there was substantial evidence to support the findings of the Full Commission and thus, that decision was affirmed.

Ms. Kelly petitioned the Arkansas Court of Appeals for rehearing, urging that a new standard of review be adopted. The petition for rehearing was denied on 5/29/91.

Ms. Kelly petitioned the Arkansas Supreme Court for a review of the decision of the Court of Appeals, but her petition was denied on 6/10/91.

REASONS FOR GRANTING THE PETITION

I. THE STANDARD BY WHICH THE COURT OF APPEALS REVIEWS AN ORDER OF THE ARKANSAS WORKERS' COMPENSATION COMMISSION SHOULD BE CHANGED, AS THE PRESENT STANDARD INSULATES THE COMMISSION FROM JUDICIAL REVIEW OF ARBITRARY DECISIONS WHICH ARE NOT SUPPORTED BY THE RECORD AS A WHOLE.

The present standard of judicial review by which the Arkansas Court of Appeals reviews a decision of the Arkansas Workers' Compensation Commission is whether the order is supported by any substantial evidence. Arkansas Code of 1987 Annotated, § 11-9-711 (b) (4) (D). In reviewing the decision of the Workers'

Compensation Commission, the Court views the evidence and all reasonable inferences deducible therefrom in the light most favorable to the findings of the commission, and must uphold the Commission's findings if there is any substantial evidence to support them, even if a preponderance of the evidence would indicate a different result. Tahutini v. Tastybird Foods, 18 Ark. App. 82, 711 S.W. 2d 173 (1986); Johnson v. Hux, 28 Ark. App. 187, 722 S.W. 2d 362 (1989).

The Court's present standard of review, which is the substantial evidence, has been criticized by some members who now sit on the Supreme Court, who used to sit on the Arkansas Court of Appeals, and who have now had time to reflect on this procedure. As a concurring opinion stated:

> "As a member of that court in 1979 and 1980, I began to question the wisdom of composing a quasi-judicial body, such as the commission, of advocates for the points of view always at odds in the cases before

it. My skepticism has since grown, and I must take this opportunity to discuss a law that requires us to hold, as we do today, that a commissioner is disqualified because his background is not of the sort that will assure he is sufficiently partial.

The creation of an entity such as the commission, which is recognized to be an administrative body but which has one function which is purely adjudicative, brings on problems associated with courts . . . . Although it is not a court per se, the commission has replaced the courts' adjudicative function with respect to the claims of injured workers, at least at the first hearing and review levels."

* * *

" Despite the fact that it is the ALJ who hears the witnesses and has the opportunity to see them face to face, we persist in holding that his or her decision is meaningless when a

decision of the commission is on appeal."

* * *

" Given the changes going on around us and given the changes which have come about by necessity in our own workers' compensation scheme since our commission was created by Initiated Act 4 of 1948, it occurs to me that we should be thinking of creating a system in which the decisions of the ALJs are like those of juries, to the extent that the factual determinations should be

> reviewed only to determine if they are supported by substantial evidence. An alternative would be to review them as the factual decisions of trial judges are reviewed in other civil cases, i.e., to determine if they are clearly erroneous or clearly against the preponderance of the evidence. Ark. R.Civ.P. 52(a).
>
> No matter what standard of review is chosen, however, the reviewing body need not be poised to recreate the adversarial arguments and adversarial positions taken and protected at the hearing level. Requiring management and labor representatives on such a reviewing body, so analogous to a court, is like assuring that our court of appeals or this court be composed of equal numbers of plaintiffs' advocates and defendants' advocates in tort cases. In any body exercising the function of legal review, the public is entitled to, and should demand the putting aside of social philosophies which are the stuff of legislation. That may not be entirely possible, but at the very least, we should not encourage the advocacy of such points of view when we are empowering a tribunal to interpret the law and apply it to facts rather than to make the law to be applied."

Webb v. Workers' Compensation Commission, 733 S.W. 2d 726, 727-728 (Ark. 1987).

There is a good discussion on "scope of review" contained in Gellhorn, Byse, Strauss, Rakoff, Schotland, Administrative

Law--Cases and Comments, 349 (8th ed. 1988), as follows:

> " If we envision scope as a spectrum, there is agreement about the end-points. At one extreme, the administrative determination is conclusive, that is, the reviewing court must accept the administrative decision; this is in fact no review at all, and is extremely rare in American law. At the other extreme, 'de novo' review gives the administrative determination no effect, that is, the court exercises its own judgment wholly independent of the agency's decision; although not as rare as no review at all, de novo review is not widely used. Between those extremes occurs the overwhelming bulk of judicial review, with a range of degrees of judicial aggressiveness or restraint, described by formulaic phrases such as 'clearly erroneous,' 'substantial evidence on the whole record,' and 'arbitrary and capricious' or 'an abuse of discretion', each purportedly describing a 'differential deferential role.'
>
> Judges and brief-writers in thousands of cases go on at length, especially in recent decades, about which scope is applicable or how it should be applied. At risk of overstating positions, we may categorize four divergent views about what all that writing means. We might call one view 'realist' (some might call it nihilist):
>
> At best concepts such as 'substantial evidence' tend to be a little more than convenient labels

attached to results reached without their aid . . . . [We suspect] that the rules governing judicial review have no more substance at the core than a seedless grape . . . . Nevertheless, despite this recognition of the essential meanlessness of the accepted formulae of judicial review, the rules unaccountably command endless attention in the classroom and legal literature.

A second view may be called 'reductionist':

> The scope of review varies all the way from total unreviewability to **de novo** review, but the dominant scope of review is in the middle: **Courts usually substitute judgment on the kind of questions of law that are within the special competence, but on other questions they limit themselves to deciding reasonableness; they do not clarify the meaning of reasonableness but retain full discretion in each case to stretch it in either direction.** The italicized statement is in general an adequate summary of the main idea of the law of scope of review and may be more reliable than the many complexities and refinements that are constantly repeated in judicial opinions.

A third view may be called 'formalist,' attaching much weight to which formula is employed and making many refinements in how the formulas should apply to different actions or issues under review. By no means is formalism removed from realities: many statutes reflect legislative struggles over what scope of review formula shcuild be used, and one of

the fullest Congressional efforts regarding Administrative Law in this generation has involved an effort to amend the APA's provisions on scope.

A fourth view, finally, might be labeled 'pragmatic.' Scope must be dealt with, **first** because different statutes use the language of scope to fill in the 'partnership agreement' between different agencies and the courts: if the formulaic phrases are used to allocate functions and degrees of responsibility, then whether one is involved in legislating, administering or litigating, one needs a working sense of what the statutory language calls for. **Second**, reflecting such statutes and much judge-made law, there is a vast body of judicial opining on scope: 'we should not assume that our judges are dissemblers' and certainly the opinions must be susceptible to analysis if one is to say how existing law may bear on a new matter. **Third**, a number of well-recognized factors operate to invoke more deferential or more aggressive review; awareness of these factors helps greatly in analyzing precedent and predicting results. **Last**, going beyond (or to a different level of) pragmatism, if neither formulas nor discoverable factors are operating with reasonable consistency, then the 'senior partner' is intervening as it freely chooses whenever it freely chooses, an assertion about the judiciary that is at once both unrealistic and in a democracy, unacceptable." (footnotes omitted)

In Universal Camera Corp. v. National Labor Relations Board, Supreme Court of the United States, 1951, 340 U.S. 474, the Court discussed the scope of review by stating:

> " . . . Reviewing courts must be influenced by a feeling that they are not to abdicate the conventional judicial function. Congress has imposed on them responsibility for assuring that the Board keeps within reasonable grounds. That responsibility is not less real because it is limited to enforcing the requirement that evidence appear substantial when viewed, on the record as a whole, by courts invested with the authority and enjoying the prestige of the Court of Appeals. The Board's findings are entitled to respect; but they must nonetheless be set aside when the record before a Court of Appeals clearly precludes the Board's decision from being justified by a fair estimate of the worth of the testimony of witnesses or its informed judgment on matters within its special competence of both. . . . Whether on the record as a whole there is substantial evidence to support agency findings is a question which Congress has placed in the keeping of the Courts of Appeals."

The Arkansas Court of Appeals should consider "the record as a whole" in workers' compensation cases and not deem

itself merely a judicial echo or a rubber stamp of the Board's conclusion.

In Ms. Kelly's case, the record "as a whole" supported a decision that if the claimant reached the end of her healing period then she suffered some degree of permanent partial disability and was entitled to additional benefits, plus payment of her chiropractic bills.

Prior to claimant's on-the-job injury, she was a healthy person capable of engaging in sustained employment. Now, she is mentally and physically unable to work, and there is no evidence of any other contributing factor other than her injury in December of 1987. Because the medical evidence unequivocally establishes a causal connection between claimant's current incapacitation and her on-the-job injury in December of 1987, it was a miscarriage of justice for the Arkansas Court of Appeals and the Supreme Court of Arkansas to affirm the decision of the

Full Commission using the current standard of judicial review.

Should the standard of review be adopted as set out above, there will not be as many appeals, and the Commission will not act as boldly when it knows that its work is going to be more carefully reviewed.

The Fourteenth Amendment guarantees equal protection of the law. Why should the administrative agency change from "liberal" to "conservative" because of the appointees to the administrative agency? The agency should remain consistent so as to treat all equally.

In a subsequent case, the Arkansas Supreme Court has agreed to consider the proper standard of review for an administrative agency. Scarbrough v. Cherokee Enterprises, No. 91-54. If the law changes, then this case should be remanded to conform to the new law.

CONCLUSION

The petition for writ of certiorari should be granted.

Respectfully Submitted,

ORIGINAL SIGNED BY

Anthony W. Bartels
Attorney at Law
P. O. Box 1640
Jonesboro, Arkansas 72403
Phone: (501) 972-5000
Ark. Bar ID No: 68005

July 30, 1991.

APPENDIX A

Office of the Clerk
Supreme Court of Arkansas
Arkansas Court of Appeals
Justice Building
625 Marshall
Little Rock, AR 72201

Leslie W. Steen
Clerk

Rae W. Millard
Deputy

Robin Horne
Chief Deputy

Greta Bivins
Deputy

Melissa Fuller
Chief Deputy

Sam Harris
Deputy

Janie Owen
Deputy

Daniel Dodson
Deputy

Denise Parks
Deputy

Holi North
Deputy

Ginger Mullins
Deputy

June 10, 1991

Anthony W. Bartels
Attorney at Law
P. O. Box 1640
Jonesboro, AR 72403

RE: 91-129 Betty Kelly v.
Holiday Inn of Blytheville,
et al.

Dear Mr. Bartels:

The Court made the following order in the above styled case today:

"Petition for Review is denied."

Sincerely yours,

/s/Leslie W. Steen
Leslie W. Steen, Clerk

LWS:rm

cc: Todd Williams

APPENDIX B

Office of the Clerk
Supreme Court of Arkansas
Arkansas Court of Appeals
Justice Building
625 Marshall
Little Rock, AR 72201

Leslie W. Steen
Clerk

Rae W. Millard
Deputy

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Greta Bivins
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Sam Harris
Deputy

Janie Owen
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Daniel Dodson
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Denise Parks
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Holi North
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Ginger Mullins
Deputy

May 29, 1991

Anthony W. Bartels
Attorney at Law
P. O. Box 1640
Jonesboro, AR 72403

RE: CA90-204 Betty Kelly v.
Holiday Inn of Blythevlle

Dear Mr. Bartels:

The Arkansas Court of Appeals made the following order today in the above styled case:

"Petition for Rehearing is denied."

Sincerely yours,

/s/Leslie W. Steen
Leslie W. Steen, Clerk

LWS:mf

cc: Todd Williams
Commission
(WCC No. D800342)

APPENDIX C

ARKANSAS COURT OF APPEALS

BETTY KELLY, APPELLANT

V. NO. CA90-204

HOLIDAY INN OF BLYTHEVILLE, APPELLEE

Opinion Delivered May 8, 1991

APPEAL FROM ARKANSAS
WORKERS' COMPENSATION COMMISSION
No. D800342

AFFIRMED

JUDITH ROGERS, Judge

This is an appeal from a decision of the Workers' Compensation Commission. The Commission, in a two to one decision, affirmed a finding by an administrative law judge that chiropractic treatment rendered by Dr. D. J. Brewer was unauthorized, and reversed the law judge on his finding that the appellant was entitled to permanent partial disability benefits. On appeal, the appellant contends the preceding conclusions are not

supported by substantial evidence and further argues the Commission abused its discretion in denying her motion to reopen based upon newly discovered evidence. Finding no error, we affirm.

The record reveals that on or about December 17, 1987, the appellant sustained a compensable injury to her buttocks and knee when she fell while performing her job as a maid for the appellee. Temporary total disability benefits were paid from the date of the injury through February 22, 1988. In addition, the appellee assumed the payment of medical services and treatment, with the exception of those expenses associated with Dr. Brewer's care. The appellant filed a claim with the Commission contending she was entitled to additional temporary total disability benefits, permanent partial disability benefits attributable to twenty percent to the body as a whole and payment of Dr. Brewer's medical expenses. In an opinion

rendered on March 6, 1991, an administrative law judge concluded the appellant was entitled to permanent partial disability benefits at a rate of twenty percent to the body as a whole, but she was not entitled to additional temporary total disability benefits and the appellee was not responsible for chiropractic care given by Dr. Brewer. On appeal to the Commission, the law judge's decision was affirmed in part and reversed in part. The Commission reversed the law judge in concluding the appellant had failed to prove her entitlement to permanent partial disability benefits, but affirmed the finding the appellee was not liable for the treatment given by Dr. Brewer. In a subsequent Commission opinion dated September 21, 1991, the appellant's motion to reopen to introduce various medical exhibits was denied. It is from these decisions that this appeal arises.

Prior to discussing the merits of the appellant's issues on appeal, we note that in the appellant's "point to be relied upon for reversal" she stated that there is no substantial evidence to support the denial of temporary total disability benefits. The appellant appears to have abandoned this argument and we do not render a decision on this issue.

On appellate review we seek only to determine whether its findings are supported by substantial evidence. Marrable v. Southern LP Gas, Inc., 25 Ark. App. 1, 751 S.W. 2d 15 (1988). In reviewing the evidence, we give its strongest probative force in favor of the Commission's finding and will affirm if fair-minded persons with the same set of facts before them could have reached the conclusion reached by the Commission. Silvicraft, Inc. v. Lambert, 10 Ark. App. 28, 661 S.W. 2d 403 (1983). The claimant has the burden of proving by a

preponderance of the evidence that she is entitled to compensation benefits. Voss v. Ward's Pulpwood Yard, 248 Ark. 465, 425 S.W. 2d 629 (1970). In determining whether the claimant has met her burden of proof, this Commission is to weigh the evidence impartially without giving the benefit of the doubt to either party. Wade v. Mr. C. Cavenaugh's, 298 Ark. 363, 768 S. W. 2d 521 (1989); Ark. Code Ann. § 11-9-704 (c) (4) (1987).

Initially, the Commission found the appellant failed to prove by a preponderance of the evidence her entitlement to permanent partial disability benefits. In reaching this conclusion, the Commission referred to the examinations and corresponding documentation regarding the appellant's condition from Dr. Ramond Lopez, Dr. D. J. Brewer and Dr. Allen Boyd. Dr. Lopez saw the appellant on one occasion and was the sole physician to opine that she suffered

any permanent disability. To the contrary, Dr. Brewer, the appellant's treating physician, indicated in an April 27, 1988, letter the appellant had no permanent disability. In addition, the results of a CT scan performed by Dr. Boyd were normal in that the scan showed no evidence of herniation, bulging or stenosis. In a report dated October 27, 1988, Dr. Boyd stated " . . . there is no permanent impairment to the body as a whole from this injury." The Commission determined that the opinions of Drs. Brewer and Boyd were entitled to greater weight than that of Dr. Lopez. We recognize that the Commission has the duty of weighing medical evidence as it does any other evidence and if the evidence is conflicting, the resolution of a conflict is a question of fact for the Commission. Farmer's Ins. Co. v. Buchheit, 21 Ark. App. 7, 727 S.W. 2d 391 (1987).

In addition to the medical testimony, the Commission noted that the appellant is a forty-two year old woman with an eleventh grade education. The appellant can read, write, bend, sit for two hours and stand for one hour. The Commission also stated that the appellant had offered insufficient evidence proving she was incapable of earning the same wages she was earning prior to the compensable injury. Furthermore, the appellant had shown no motivation to seek rehabilitation. We agree with the Commission that the appellant failed to prove by a preponderance of the evidence that she was entitled to permanent partial disability benefits and this decision is supported by substantial evidence.

Next, the appellant argues the record is devoid of substantial evidence to affirm the Commission's decision that the appellee is not responsible for the chiropractic care rendered by Dr. Brewer.

The law judge found the appellee was not liable for Dr. Brewer's expenses prior to written notification being given to the appellee pursuant to Ark. Code Ann. § 11-9-514 (a) (2) (1987). However, before the Commission, the appellant argued that Dr. Brewer's care was emergency treatment and that the lack of notice was excusable. The Commission determined that since the appellant failed to raise the issue with regard to emergency treatment before the law judge, it would not consider the issue on appeal. Rule 25 of the Rules of the Workers' Compensation Commission provides that "[a]ll legal and factual issues should be developed at the hearing before the Administrative Law Judge or single Commissioner. The Commission may refuse to consider issues not raised below." We find no error in this regard and need not address the merits of the appellant's argument in that it has not been preserved for appellate review.

Last, the appellant posits error in the denial of her motion to reopen based upon newly discovered evidence. On August 29, 1990, we granted the appellant's motion to remand to the Commission for a determination of the appellant's motion to reopen. On September 21, 1990, the Commission issued its order denying the motion. In Roberts-McNutt, Inc. v. Williams, 15 Ark. App. 240, 691 S.W. 2d 887 (1985), we said:

> Clearly the Commission is vested with discretion in determining and under what circumstances a case appealed to them should be remanded for the taking of additional evidence. On appeal an exercise of that discretion will not be lightly disturbed (emphasis added).

As stated in Roberts, "[a] case should only be remanded if the newly discovered evidence is relevant, is not merely cumulative, would change the final result, and was diligently discovered and produced by the movant." See also Haygood v. Belcher, 5 Ark. App. 127, 663 S.W. 2d 391 (1982); Mason v. Lauck, 232 Ark. 891, 340

S.W. 2d 575 (1960). The Commission found the appellant had shown no good reason as to why medical reports could not have been obtained earlier, and accordingly, denied the appellant's motion to reopen. The Commission explained its decision by stating:

> In summary, this claimant asked for a hearing on permanent partial disability benefits. The evidence which this Commission relied upon including the report of Dr. Brewer was in existence prior to the hearing before the Administrative Law Judge. If claimant had a problem with Dr. Brewer's report, she had every opportunity prior to the hearing to obtain a clarification, and she did not do so, and should not now be heard to complain. Further, claimant has offered no explanation as to why the reports of the other treating physicians in this case could not have been obtained prior to the hearing.

Finding the appellant did not exercise due diligence in discovering and producing the medical exhibits, the Commission correctly denied the appellant's motion to reopen. We perceive no abuse of discretion in this decision.

Based upon the record before us, we affirm the Commission's decision.

Affirmed.

Cracraft, C. J., and Mayfield, J., agree.

APPENDIX D

11-9-711. Finality of order or award--Review.

(a) AWARD OR ORDER OF ADMINISTRATIVE LAW JUDGE OR SINGLE COMMISSIONER--REVIEW. (1) A compensation order or award of an administrative law judge or a single commissioner shall become final unless a party to the dispute shall, within thirty (30) days from the receipt by him of the order or award, petition in writing for a review by the full commission of the order or award.

(2) Any party to the dispute may cross appeal by filing a written petition for cross appeal within fifteen (15) days after the notice of appeal is filed in the office of the commission, except that in no event shall a cross appellant have less than thirty (30) days from the receipt by him of the order or award within which to file a notice of cross appeal.

(b) AWARD OR ORDER OF COMMISSION--APPEAL. (1) A compensation order or award of the Workers' Compensation Commission shall become final unless a party to the dispute shall, within thirty (30) days from receipt by him of the order or award, file notice of appeal to the Court of Appeals, which is designated as the forum for judicial review of those orders and awards.

(A) The appeal to the Court of Appeals may be taken by filing in the office of the commission, within thirty (30) days from the date of the receipt of the order or award of the commission, a notice of appeal, whereupon the commission under its certificate shall send to the court all pertinent documents and papers, together with a transcript of evidence and the findings and orders, which shall become the record of the cause.

(B) Any other party to the dispute may cross appeal by filing in the office of the commission a notice of cross appeal to the Court of Appeals within fifteen (15) days after the notice of appeal is filed, except that in no event shall a cross appellant have less than thirty (30) days from his receipt of the order or award of the commission within which to file a notice of cross appeal.

(2) Appeals from the commission to the Court of Appeals shall be allowed as in other civil actions and shall take precedence over all other civil cases appealed to the court.

(3) Upon appeal to the Court of Appeals, no additional evidence shall be heard. In the absence of fraud, the findings of fact made by the commission, within its power, shall be conclusive and binding upon the court and shall be given

the same force and effect as in cases heretofore decided by the Supreme Court of Arkansas, except subject to review as in subdivision (b) (4) of this section.

(4) The court shall review only questions of law and may modify, reverse, remand for rehearing, or set aside the order or award, upon any of the following grounds, and no other:

(A) That the commission acted without or in excess of its powers;

(B) That the order or award was procured by fraud;

(C) That the facts found by the commission do not support the order or award;

(D) That the order or award was not supported by substantial evidence of record.

(c) APPEAL COSTS. In all appeals the cost shall be assessed as provided by law in civil cases. The commission may require a bond from either party, if it

deems necessary, in cases appealed to the Court of Appeals.

(d) SCHOOL DISTRICT EMPLOYEES. The action taken by the Workers' Compensation Commission with respect to the allowance or disallowance of any claim filed by a school district employee shall be subject to appeal to the circuit court as provided for in subsection (b) of this section.